

1 **DEPARTMENT OF PUBLIC SERVICE REGULATION**
2 **BEFORE THE PUBLIC SERVICE COMMISSION**
3 **OF THE STATE OF MONTANA**

IN THE MATTER OF THE PETITION OF JAMES T.)
AND ELIZABETH A. GRUBA; LEO G. AND JEANNE)
R. BARSANTI ON BEHALF OF THEMSELVES &) REGULATORY DIVISION
OTHERS SIMILARLY SITUATED,)
Complainants.)

VS.

DOCKET NO. D2010.2.14

NORTHWESTERN ENERGY,

Defendant.

4 _____
5
6 **COMPLAINANTS' REPLY TO NWE'S RESPONSE TO COMPLAINANTS' MOTIONS**
7 **TO COMPEL ANSWERS TO DISCOVERY**

8
9 **MOTION ENCOMPASSING ALL DISCOVERY**
10

11 Complainants withdraw their claim that NorthWestern Energy (NWE) failed to response
12 to all of Complainants' Second Discovery requests (C-051 through C-074) in a timely manner.
13 While the response was not within the 10 day set forth in PSC Order 7084g, ¶ 10, that order was
14 suspended by email notice 1 1/2 hours prior to when the Second Discovery Requests were
15 tendered.

16 **MOTIONS WITH REGARD TO REQUESTS FOR ADMISSION**

17 Complainants' withdraw their assertion that NWE did not respond to Complainants'
18 February 27, 2014, Requests for Admissions RFA 31(C-052) through RFA 33 (C-054) and RFA
19 37 (C-058) & RFA 38 (C-059) in a timely manner. NWE was allowed an additional day to file
20 because day 30 fell on a weekend. Complainants' attorney apologizes for his oversight in
21 calculating that due date.

22 **OTHER MOTIONS TO COMPEL**

23 **C-052 (RFA 31)**

1 **Complainants withdraw their request to have NWE admit C-052 because NWE has**
2 **supplied (response to C-041) the first date HPS billing began for SILMDs 161 & 162.**

3 **Therefore, Complainants move to amend** Petition ¶ 92 to read:

4 92. When the 175 watt mercury vapor (MV) lights in Billings SILMDs # 161 & 162 were
5 changed to 100 watt high pressure sodium lights billing for the new lights began on
6 3/19/1991 (for SILMD # 161) and on 3/20/1991 (for SILMD # 162.
7

8 **C-053 (RFA 32)**

9 **Complainants withdraw their request to have NWE admit C-053 because NWE's**
10 **brief in opposition to the motion to compel an answer to this request establishes what**

11 **Complainants' need to know.** NWE did not admit Petition ¶ 93. So, Complainant's asked for
12 an admission of this clarification, namely that "the PSC's 1982 Order No. 4938a allowed
13 NorthWestern's predecessor, Montana Power, 7 years to complete the transition to HPS street
14 lights from earlier technologies." NWE's brief in response to the motion to compel,
15 acknowledges the order and assigns its date as May 12, 1983.

16 Therefore, in lieu of trying to pry an admission of what ought to be admitted from NWE
17 by crafting a request it can't find some objection to, the Commission is asked to take
18 administrative notice of its Order 4938a and of NWE's acknowledgement of it. While NWE's
19 predecessor was a bit late in converting lights in SILMDs 161 & 162 discussed above, for the
20 most part, seven years from the date of the order can be used to establish the time when billing
21 for HPS luminaires should have begun and when revenue recovery for older lights ended. In the
22 absence of NWE being able to demonstrate the original cost of lights in almost all cases, it
23 becomes necessary to make the best estimate of what that original cost would have been and
24 when billing for that new infrastructure would have begun. That date the process of amortizing
25 the original cost of the HPS fixtures began is relevant because it shows that it is more likely than

1 not that the ownership charge was and is excessive because the revenue pays for the original cost
2 of the lights before NWE's depreciation schedule removes the cost data from the rate base.

3 Complainants assert that Order No. 4938a, which "allowed NorthWestern's predecessor,
4 Montana Power, 7 years to complete the transition to HPS street lights from earlier
5 technologies," is relevant to indicate the PSC has authority to regulate the type of street lights the
6 monopoly offers to its customers.

7 NWE contends that Order No. 4938a did not order the change in technology, but rather
8 permitted it. The distinction is immaterial. The Commission's prior order demonstrates it has
9 authority to order a change in technology. The fact that in that proceeding Montana Power asked
10 the Commission to do so is an admission against interest demonstrating that the utility knew the
11 Commission had power to regulate street lighting technology to save customers money.

12 In addition to overlooking Commission Order No. 7984f, ¶ 10 which took "under
13 advisement" and did not rule on the specific question of whether the PSC had authority to order a
14 change from one technology to another, NWE's relevancy objection also ignores the fact that
15 Complainants are allowed to make offers of proof on items that have been omitted from
16 evidence. Thus, this issue should not confuse anyone. Complainants are developing a record so
17 that when the Commission revisits the question of its authority the record will prove the need to
18 end monopoly practices that are allowing NWE to levy an energy charge that is twice as high as
19 it should be for its street lighting customers because NWE refuses to switch to a more efficient
20 technology.

21 **C-054** (RFA 33) Complainants withdraw their motion to compel answer to the following request
22 for admission because it has become clear from other answers, as stated below, why NWE cannot
23 do so. The answer is relevant as set forth in the reply to the C-053 discussion above.

1 To clarify NWE's response to Petition ¶ 94, Complainants' asked NWE to admit that:

- 2 a. NorthWestern's predecessor, Montana Power, completed the transition to
- 3 HPS street lights from earlier technologies within the seven years allowed
- 4 by PSC Order No. 4938a;
- 5 b. NorthWestern's predecessor, Montana Power, did not seek relief from
- 6 PSC Order No. 4938a to allow it more than 7 years to completed the
- 7 transition to HPS street lights from earlier technologies;
- 8 c. Compliance with PSC's 1982 Order No. 4938a, would have required all
- 9 conversions to utility-owned HPS lights in Montana Power's system to be
- 10 completed by 1/1/1990.

11
12 It is now clear that subparagraph (a) could not be admitted because at least in Billings
13 SILMDs 161 and 162 the transition to HPS was not completed within the 7 years allotted by
14 Order No. 4938a. Compliance with the Order would have required conversion to be complete by
15 May 13, 1990, and not January 1 of that year.

16 This information relates to the issue of whether the ownership charge is being correctly
17 applied because the data requested would narrow down the dates when the transition to HPS
18 street lights to which the ownership charge or its predecessor was being applied were installed.
19 Such answers also would narrowed the dates by when any stranded costs still left in the rate base
20 for charges related to older technology were recovered pursuant to PSC order. Those dates are
21 relevant to illustrate that stranded costs were not carried forward into the rate base for HPS street
22 lights beyond May 13, 1990, so there is no need to recover them as part of the present ownership
23 charge.

24 **Since the Commission will likely be taking Judicial Notice (as is required by M.R.**
25 **Evid. 202(b)(4)) of the facts in its own official acts (i.e., orders) as stated in RFA 33,**
26 **Complainants have established the element of proof indicating when costs from prior rate**
27 **base allocations were recovered and at least one date when amortization of the new**
28 **technology would begin.**

29 **ADDITIONAL MOTIONS WITH REGARD TO INTERROGATORIES**

C-060 (I 16) & C-061 (I 17): To clarify NWE's billing practices, Complainants asked:

1) Please explain in detail what NorthWestern's LS billing charge pays for; and

C-061 (I 17)

1) Please explain in detail what NorthWestern's LS operations charge pays for and tell how that charge differs from the LS billing charge.

NWE contends data requests C-060 and C-061 do not relate to the ownership charge

because they reference a different component of the rate namely the billing charge and the operations charge and are therefore irrelevant in this proceeding. Its response to the motion to compel adds nothing to its irrelevancy lament against these questions.

The billing charge is mentioned in the testimony of utility witness Orr (page 188, CAO-4, line 25) in the Docket D96.3.33 that NWE refers us to in its answer to MCC-001. There Ms. Orr discusses the various charges (including billing) assigned to street lights. Further questions about it are relevant here. Also, please see the discussion of this issue in Complainant's Motion to Compel concerning the billing charge objections.

C-062 (I 18), C-063 (I 19) & C-073 (RPD) 7

To clarify NWE's billing practices for the SILMDs where Complainants Gruba, and a Barsanti neighbor live, Complainants asked for answers to the following interrogatories:

1) Please explain why one group of 34, 100 watt lights is noted separately from another 100 watt light on the same SILMD # 230, June 2009 bill to the City of Billings. If it is because the average original cost of the lights differs, please explain why that was the case.

2) Please indicate the original cost of each group of lights and the dates billing began for each group.

C-063 (I 19)

1) Please explain why one group of 17, 100 watt lights has an ownership charge of \$15.72 and another 100 watt light in the same SILMD # 191 (June 2009 bill to the City of Billings has an ownership charge of \$12.95. If it is because the average original cost of the lights differs, please explain why that was the case. And tell why the cost for the entire SILMD was not averaged.

2) Please indicate the original cost of each group of lights and the dates billing began for each group.

C-073 (RPD) 7

1 1) Please provide a copy of tariff pages containing any numerical changes to any street
2 lighting ownership charge tariff that Montana Power or NorthWestern had between
3 1982 and the present.
4

5 **NWE Objection:** NWE contends answers to data request C-062 ¶ 2, C-063 ¶ 2 and C-
6 073 ¶ 1 would not be relevant because the ownership charge in the ELDS-1 tariff, which was
7 effective on January 1, 1997, “was not in effect at” the time the original cost of the lights was
8 incurred by NWE (i.e. 12/22/84 for SILMD 230 lights involved in the C-062 ¶ 2 inquiry,
9 3/19/1991 for the C-063 ¶ 2 inquiry; and as far as C-073 goes, for tariff periods between 1982 and
10 1997).

11 **Complainants’ Response to Objection:** NWE has not demonstrated the truth of its
12 irrelevancy response to Complainants’ Motion to Compel, namely that “What happened prior to
13 1997 does not affect the manner in which ownership charges for street lights were and are
14 determined.” It is apparent from Docket D96.3.33 that NWE referred us to when responding to
15 MCC-001, the rates eventually established in 1997 were based on a 1994 test period that carried
16 forward data from which the average cost of street lights in each Unmetered Light Code
17 Category were placed. See Orr Exhibit 1 reprinted below.

Lighting Monthly Ownership Charge Calculation

		Total Costs (\$000)	Total # of Units	Avg Cost per Unit	Annual Cost (Avg x CChg) 12.59%	Monthly Charge (Annual/12)
1	Cost Range:					
2	\$200-\$399	\$1,649	7,574	\$217.74	\$27.41	\$2.28
3						
4	\$400-\$599	\$21,637	46,385	\$466.46	\$58.73	\$4.89
5						
6	\$600-\$799	\$4,842	6,692	\$723.61	\$91.10	\$7.59
7						
8	\$800-\$999	\$5,207	5,993	\$868.77	\$109.38	\$9.11
9						
10	\$1,000-\$1,199	\$1,035	991	\$1,044.29	\$131.48	\$10.96
11						
12	\$1,200-\$1,399	\$4,913	3,875	\$1,267.87	\$159.62	\$13.30
13						
14	\$1,400-\$1,599	\$4,111	2,661	\$1,544.93	\$194.51	\$16.21
15						
16	\$1,600-\$1,799	\$1,828	1,051	\$1,739.71	\$219.03	\$18.25
17						
18	\$1,800-\$1,999	\$78	40	\$1,960.95	\$246.88	\$20.57
19						
20	Total	\$45,301	75,262			
21						
22						
23						
24	\$2,000-\$2,199	\$2,100	1	\$2,100	\$264.33	\$22.03
25						
26	\$2,200-\$2,399	\$2,300	1	\$2,300	\$289.51	\$24.13
27						
28	\$2,400-\$2,599	\$2,500	1	\$2,500	\$314.69	\$26.22
29						
30	\$2,600-\$2,799	\$2,700	1	\$2,700	\$339.87	\$28.32
31						
32	\$2,800-\$2,999	\$2,900	1	\$2,900	\$365.05	\$30.42

lighting/ownership chg

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1 As Complainants stated in their motion:

2 Whatever tariff or tariff component that was being used to cover the original costs
3 of NWE's (Montana Power's) utility-owned street lights would have had to be converted
4 to the ELDS-1 tariff. For purposes of this proceeding, that should be considered the
5 predecessor of the ELDS-1 tariff (much in the same way the Montana Power is the
6 predecessor of NorthWestern). If the original cost depreciated of affected street lights
7 was not assigned to the remaining street light rate base values at the time of the 1997
8 conversion to the ELDS-1 tariff, then neither the PSC nor NWE had any way to tell
9 whether the ELDS-1 tariff categories the lights were being assigned to had any rational
10 relationship to producing more, enough, or less revenue than necessary to cover the
11 original cost of the lights before the 34.6 year or 40.3 year amortization schedules used at
12 various times by NWE were complete.
13

14 On May 2, 2014, NWE filed a response to C-041 which gave the dates when billing
15 began for high pressure sodium lights in SILMDs 161 & 230, so that part of the interrogatory has
16 been answered. However, in C-041, footnote C in response to a request for original cost of lights
17 in these districts, NWE admitted "C. The average cost of each light in SILMD cannot be
18 determined from utility electronic billing system nor from paper files." However, we still do not
19 know whether the original cost can be determined from other accounting systems maintained by
20 NWE.

21 Further, even if NWE is allowed to stonewall by not responding to requests for data prior
22 to 1997, it should have provided tariff changes for the ownership charge after that date as
23 requested in C-073 without forcing Complainants to go to Butte to get the tariff sheets or to
24 trouble Commission staff to dig them out.

25 Also, the irrelevancy objection cannot be said to apply to the request that NWE explain
26 the difference in the ownership charges noted in C-062(a) and C-063(a). Since NWE has failed
27 to respond to that portion of the request, it should be compelled to do so or be sanctioned for not
28 doing so.

1 NWE contends the methodology for determining Complainants' sanction-request for
2 refusal to respond to provide original costs should not be imposed because Complainants'
3 request is premature because the methodology will be used by Complainants in their rebuttal
4 testimony. Complainants would use actual original cost figures and beginning billing dates to
5 determine the alleged overcharge to the extent that data is available. However, since as revealed
6 by the quoted footnote C, above, NWE either will not or cannot provide that complete data,
7 Complainants must use the available data. Complainants have thus far used the highest rate of
8 return and top of the Unmetered Rate Code range when calculating the number of years it takes
9 to amortize street lighting costs in a SILMD. That methodology "rewards" NWE's failure to
10 conduct its accounting in a manner that allows regulators to easily determine whether or not the
11 utility is recovering more than the original cost of street lights, in violation of the law.

12 Therefore, it is appropriate for the Commission to either order NWE to come up with
13 original cost figures and tariffs indicating changes in the ownership charge and changes in the
14 predecessor to the ownership charge, or to face sanctions. Absent complete data that only NWE
15 can supply, Complainants should be allowed to use available data based on weighted averages
16 taking into account rates of return and changes in tariff revenues and assuming the original cost
17 was no greater than either the low end of the Rate Code Range assigned to lights in a SILMD or
18 the average of all lights in the Unmetered Light Code Cost Range as indicated on CAO -1
19 (Column 4) reprinted above.

20 Since NWE cannot comes up with the original cost of street lights it owns at the time
21 they were put into service or the amounts charged to cover infrastructure cost since that time, it
22 must be concluded that NWE cannot demonstrate that it has not been allowed to recover more
23 than the original cost allowed by MCA § 69-3-109. Indeed, the depreciation costs assumed in the

D96.3.33 testimony for street lights is 25 years, not the 34.6 or 40.3 year depreciation schedules used since that time. Lengthening the depreciation schedules after rates have been established to recover original costs, causes an overcharge to occur.

Therefore, the sanction requested by in Complainants' motion should be applied.

C-065 (I 21) Complainants asked:

1) Please explain:

- a. why NorthWestern is billing SILMD 10 an ownership charge of \$1.73 for 62 street lights when the City of Billings records show that you only own 61;
- b. where the \$1.73 charge comes from;
- c. when the \$1.73 charge started; and
- d. What the average original cost of the 61 or 62 lights was at the time billing began?

NWE Response: NWE contends it answered these questions.

Complainants' Response to Objection: NWE's statement "No part of the information used as the foundation for this interrogatory is correct" is incomplete and evasive. NWE may no longer be charging an ownership charge of \$1.73. But that was never clarified by NWE. Complainants pointed out from NWE's own bills at Complainants' Exhibit 8, page 9, that the second LS Ownership Charge is: "LS Ownership Charge 62.0 @ 1.7300000 \$353.70."

By responding in the present tense, NWE apparently is quibbling about the word "is" in Complainant's question. Perhaps Complainants should have used the word "was" in the question. Rather than make it harder to understand the discrepancy, the more reasonable approach would be for NWE to acknowledge that its past charge was no longer being imposed and tell how that was corrected. But NWE argues Complainants should not be allowed to rephrase their question.

If NWE were acting in good faith, it would rush to meet with Billings to resolve this billing discrepancy and to explain why the ownership charge is outside of the Unmetered Rate Code range. Since it won't do so, the Commission should **direct NWE to meet with the City of**

Billings to reconcile the difference in records as to the number of lights actually in service;

1 to explain where the \$1.73 charge comes from, etc., and to adjust the billing as needed and
2 explain the adjustment to Complainants regardless of when the billing discrepancy
3 occurred.

4 **C-066** (I 22) NWE contends the following Complainants' Interrogatories do not relate to the
5 ownership charge:

- 6 1) Please explain how NorthWestern's Street light Account numbers are determined;
- 7 2) What the numbers mean; and
- 8 3) Whether or not this account numbering system is used for accounts that are not street
9 or area lighting?

10
11 Without knowing how the numbering system is constructed, one cannot determine
12 whether or not one can deduce from it information about when some of the accounts were
13 created and therefore have accurate data about when the utility began depreciating the lights.
14 Since those dates are critical in determining when enough revenue has been recovered by NWE
15 to cover original cost, the Commission should order a response.

16 NWE cites *Great Northern Utilities Co. v. Public Service Comm.*, 88 Mont. 180, 203,
17 293 P. 294, 298 (1930); for the proposition that the Commission cannot exercise authority not
18 provided by statute. That case also acknowledged that it is beyond dispute that the Commission
19 has the delegated authority to fix rates. See also *City of Billings v. Public Service Comm.*, 67
20 Mont. 29, 214 P. 608; *State ex rel. City of Billings v. Billings Gas Co.*, 55 Mont. 102, 173 P. 799.
21 Part of that delegated authority affords the Commission the power to order a utility to take
22 reasonable steps to insure that its bills conform to the approved rates.

23 We must remember that the state may exert its police power in the regulation of a public
24 utility whenever the public interests require. The Commission may exercise discretion to
25 determine not only what the public interest requires, but what measures are necessary for the
26 protection of those interests. *City of Chicago v. O'Connell*, 278 Ill. 591, 116 N.E. 210, 8 A.L.R.
27 916. And the police power may be exerted to override contracts, privileges, franchises, charters

1 or city ordinances. *State ex rel. City of Kirkwood v. Public Service Commission*, 330 Mo. 507,
2 50 S.W.2d 114; *Milwaukee Electric Ry. & Light Co. v. Wisconsin R. Comm.*, 238 U.S. 174, 35
3 S.Ct. 820, 59 L.Ed. 1254.

4 **C-067** (I 23). To clarify NWE's response to Petition ¶ 29 Complainants asked:

5 Please provide:

- 6 a. the subtotals of the number of street lights NorthWestern owned by ownership
7 charge category and in aggregated total:
 - 8 i. on December 31, 2009, and
 - 9 ii. on January 1, 2014;
- 10 b. the subtotals of the number of street lights NorthWestern owned by ownership
11 charge category and in aggregated total which were more than 15 years old:
 - 12 i. on December 31, 2009, and
 - 13 ii. on January 1, 2014; and
- 14 c. the subtotals of the number of street lights that were in NorthWestern's rate base
15 by ownership charge category and in aggregated total for the customer class
16 including street lighting service:
 - 17 i. on December 31, 2009, and
 - 18 ii. on January 1, 2014.

19
20 NWE's response to the motion to compel answers to this interrogatory adds nothing to
21 prior discussions. Please see Complainant's Motion to Compel a response to this interrogatory.

22 **C-068** (I 24) & **C-069** (I 25) Seek information concerning SILMDs 162 & 161, namely:

- 23 a. The per unit cost of the high pressure sodium luminaires installed in SILMD #
24 162 at the time of installation
- 25 b. The date billing began for the HPS luminaires that were installed in SILMD #
26 162.
- 27 c. Detail what other replacements to existing lighting facilities were included in the
28 SILMD # 162 conversion from mercury vapor to HPS technology and the per unit
29 and total cost of those replacements.
- 30 d. Information on what existing poles, pole extensions, wiring, or other
31 infrastructure were used during the SILMD # 162 conversion to HPS to support
32 and provide electricity to the HPS luminaires.
- 33 e. The date that all street lighting plant from the installation of mercury vapor lights
34 in SILMD # 162 was completely amortized pursuant to PSC Order No. 4938a and
35 provide the annual Montana Power report to the PSC showing the completion of
36 the amortization and the account number where it is reported.
- 37 f. The original cost of the entire HPS installation in SILMD #162 not including any
38 carryover of remaining undepreciated cost from previous alley lighting
39 infrastructure.

1 g. The original cost of the HPS installation in SILMD #162 plus any carryover of
2 remaining undepreciated cost from previous alley lighting infrastructure.
3

4 **C-069** (I 25) asked the above questions for SILMD 161
5

6 NWE contends the motion to compel was not timely filed because it came on April 7,
7 2014, after the April 4th deadline set in Order No. 7084h to seek prehearing discovery pursuant to
8 ARM 38.2.3301. NWE's construction of Order 7984h is in error. That order said, "c. April 4,
9 2014: Final day for prehearing discovery permitted by ARM 38.2.3301 to be served by any party on
10 any party." Complainants' Second set of Discovery was served on February 27, 2014, not on April 7.
11 The April 4th date applied to serving of discovery on a party, not on the serving of a motion to
12 compel. Therefore, NWE's untimeliness argument must be rejected.

13 NWE also contends, Complainants should have requested to serve more than 50
14 interrogatories on NWE prior to serving them. Nothing in M.R.Civ.P. Rule 33(a)(1), or Rule
15 26(b)(2) imposes such a limitation. Therefore, Complainant's request to be allowed more than 50
16 interrogatories should now be granted in light of NWE's less than forthcoming responses to the
17 first 50 and the need to hone interrogatories in order to elicit meaningful responses. Also, please
18 see Complainant's discussion of this issue request for sanctions in its motion to compel.

19 Finally, NWE relies on its so-called "consistent" application of a process outlined
20 in C-033, MCC-001 and MCC-003 to say that Complainants' insistence on original cost data is
21 misplaced because NWE does not account for rate base additions and subtractions on a SILMD
22 basis. That explanation relies on rates set as a result of Commission action in Docket No.
23 96.3.33. However, Order No. 5915 in that docket states:

24 8. First, based on staff data requests on the stipulation the Commission understands that
25 the realigned lighting class revenue increase stems in large part from cost assumptions.
26 These cost assumptions are not included in the stipulation but rather are embedded in
27 MPC's own independent analysis. MPC apparently used embedded costs to, in large part,
28 compute the lighting class cost of service. The Commission expects MPC will explain

1 these cost assumptions when it next files a cost of service study. It is unacceptable to have
2 a different and inconsistent use of costs for lighting classes relative to other customer
3 classes.

4
5 The inconsistent use of costs for the lighting class resulted in a 14.61% rate increase for
6 the lighting class (which was not represented in the stipulated settlement by anyone). That was
7 the highest increase for any class--two other customer classes received a 6.23% rate reduction.

8 **NWE refuses to respond to C-070 (I 26), C-071 (I 27), C-072 (I 28), and C-074 (RPD 8)**

9 because they all deal with LED street lighting seeking to know:

- 10 1) ... how the current non-metered street lighting tariff for HPS lights will be used to
11 charge for LED street lights or propose a non-metered tariff for LEDs similar to the
12 one in place for Pacific Gas & Electric or other utility that charges on a non-metered
13 basis for LED street lights.

14 **C-071 (I 27)**

- 15 1) If NWE has installed utility-owned LED street, roadway, or out-door area lighting on
16 any of its customers' premises, please provide the results of those installations,
17 including but not limited to, cost and energy reductions and customer satisfaction,
18 2) Provide the names of any staff or consultant involved in such installations or tests.

19 **C-072 (I 28)**

- 20 1) If NorthWestern will allow cities, churches, and others to place customer-owned
21 LEDs on its poles, please provide:
22 a. a copy of any agreement the customer would be required to sign to receive
23 permission to utilize the poles owned by NorthWestern, and
24 b. a copy of the proposed charges that a customer would be required to pay for use
25 of poles that the customer had completely paid for pursuant to the ownership
26 charge, and
27 c. a copy of the proposed charges that a customer would be required to pay for use
28 of poles that the customer had not completely paid for pursuant to the
29 ownership charge.
30 2) If NorthWestern does not intend to allow cities, churches, and others to place
31 customer-owned LEDs on its poles, please detail all reasons why NorthWestern does
32 not intend to adhere to the rule requiring utilities to allow use of their infrastructure
33 as established in *Ottetail Power Company v. US*, 35 L.Ed.2d 359, 93 S.Ct. 1022, 410
34 U.S. 366 (1973) and a lower court ruling in *Ottetail Power Co. v. FPC*, 536 F.2d 240
35 (1976).

36 **And C-074 (RPD 8)**

- 37 1) ... a copy of any staff, consultant, or other analysis and recommendations that
38 NorthWestern is relying on to plan and implement transition from utility and

1 customer-owned HPS street lighting on its system to LED or other more efficient
2 lighting.

3 2) Provide any studies the staff, consultant, or others relied on in writing their analysis
4 and recommendation.

5 3) Provide any cost analysis of LED street lighting that NorthWestern is now relying on
6 to evaluate the price of conversion to LED cobrahead, LED decorative post-top
7 luminaires, or LED luminaires for higher speed roadways. Include prices by wattage
8 for the LEDs needed to replace wattages in each HPS wattage light category of lights
9 now supplied or served by NorthWestern.

10
11 NWE contends NWE does not have to provide information on transition to LED street
12 lights because that does not relate to the ownership charge.

13 **Complainants' Response to Objection:** The issue of relevancy of LED street lights is
14 dealt with more fully in Complainants Response to NWE's motion to strike testimony. That
15 argument is adopted here. Also, please see Complainants' explanation of the need for this data to
16 make an offer of proof, or to build a record for further consideration of issues the Commission is
17 delaying a decision on as noted by paragraph 10 of Commission Order 7084f.

18 **If the Commission does not consider revamping the monopoly practice NWE**
19 **engages in of providing no alternative to energy-hog street lights, Montana municipalities**
20 **will be forced to continue paying twice as much as they should have to in order to cover the**
21 **cost of the energy used by the inefficient lights. By considering LED lighting, this**
22 **Commission could reduce municipal budgets by as much as 25%.**

23 **Complainants continue to request oral argument on all pending motions**

24 Respectfully submitted.

May 21, 2014

25
26
27 _____
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CERTIFICATE OF SERVICE

I certify that pursuant to ARM 38.2.313, 38.2.1209 and the Procedural Order dated January 16, 2014, on May 21, 2014, an accurate copy of the **Complainants' Reply to NWE Response to Complainants' Motion to Compel Adequate Responses to Complainants' Second Data Requests in Docket No. D2010.2.14** were served upon the parties listed below in the manner provided:

<input type="checkbox"/> xx US Mail Original <input type="checkbox"/> Hand-deliver <input type="checkbox"/> Via Fax: <input checked="" type="checkbox"/> XX E-mail:	Kate Whitney, Montana Public Service Commission 1701 Prospect Av, PO Box 202601 Helena, MT 59620-2601 Email: kwhitney@mt.gov
<input type="checkbox"/> XX US Mail <input type="checkbox"/> Hand-delivery <input type="checkbox"/> Via Fax: <input checked="" type="checkbox"/> XX E-mail:	Laura Farkas, Montana Public Service Commission 1701 Prospect Av, PO Box 202601 Helena, MT 59620-2601 Email: lfarkas@mt.gov
<input type="checkbox"/> US Mail <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand-delivery <input type="checkbox"/> XX E-mail:	Robert A. Nelson, Montana Consumer Counsel 111 North Last Chance Gulch Suite 1B Box 201703 Helena MT 59620-1703 Email: robnelson@mt.gov
<input type="checkbox"/> US Mail <input type="checkbox"/> Hand-delivery <input type="checkbox"/> XX E-mail:	Sarah Norcott, Esq., Attorney for NorthWestern Energy 208 N Montana Ave., Suite 205 Helena, MT, 59601 Email: sarah.norcott@northwestern.com
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<input type="checkbox"/> XX US Mail <input type="checkbox"/> Hand-delivery <input type="checkbox"/> XX E-mail:	Mary Wright, Montana Consumer Counsel 616 Helena Ave., Suite 300 PO Box 201703 Helena, MT 59620 Email: mwright@mt.gov
<input type="checkbox"/> xx US Mail <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand-delivery <input type="checkbox"/> XX E-mail:	Tracy Lowney Killoy NorthWestern Energy 40 E. Broadway Butte, MT 59701-9394 Email: Nedra.Chase@northwestern.com

Russell L. Doty